

7-4054

OGC HAS REVIEWED.

OPINION OF THE GENERAL COUNSEL  
Government Construction Authorities



Part I - Issue

The Congress has authorized the Director of Central Intelligence to provide for a headquarters installation for the Central Intelligence Agency by acquisition of land and construction of buildings and has appropriated to the Central Intelligence Agency funds for the preparation of plans and specifications for the installation so authorized. The General Services Administration has asserted that it has an exclusive and pre-emptive statutory authority for the construction of public buildings unless specifically otherwise authorized by law and, therefore, should be the exclusive agent for the construction of the Central Intelligence Agency's building. The issue, therefore, is whether any statutory authority of the General Services Administration impairs the authority granted to the Director of Central Intelligence or would enable the General Services Administration to take over as a matter of right the construction of the Central Intelligence Agency's headquarters building.

Part II - Discussion

A detailed analysis of the pertinent statutes, rulings, hearings, and background material is contained in the attached Memorandum of Law. The multiplicity of statutes and their interrelation make it extremely difficult to refer to them without confusing those not familiar with the subject. We will, therefore, discuss here our understanding of the points involved without specific citation of statutes or other material.

The General Services Administration places its main reliance on a statute which states that its purpose is to enable the Administrator to provide suitable accommodations for certain specified Government entities and for other public buildings of the classes under the control of the Administrator and authorizing and directing him to acquire land and to cause to be constructed thereon adequate, suitable buildings for the purposes stated in the act. It appears to us that nothing in this act or in its background and history constitutes an exclusive and pre-emptive authority to construct public buildings or indicates any intent of Congress that there be an exclusive jurisdiction in the Administrator. On the contrary, this seems to be a general enabling act so that the Administrator will not have to get specific statutory authorization (which would otherwise be required) when funds

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for construction are appropriated to the General Services Administration or when funds appropriated to other agencies are required (by the appropriation act) to be transferred to the General Services Administration for construction purposes. If Congress had meant this authority to be exclusive and pre-emptive it could easily have said so. The fact that it did not, coupled with other provisions discussed hereafter, leads us to the conclusion that Congress definitely intended that this not be an exclusive authorization.

The other provisions that speak most clearly in this respect are those that authorize the Administrator to construct buildings when requested by other agencies. In the event of such requests, available funds may be transferred to the Administrator. These provisions are clearly permissive and would be quite unnecessary if the basic statute on which they rely were pre-emptive.

We see no reason, therefore, why a clear-cut authorization to the Director to construct a Central Intelligence Agency building cannot run parallel and quite separate from the enabling authorization for the Administrator. The intent of Congress in this respect is emphasized by the fact that the only statute which appears at all exclusive is one requiring that no money shall be spent on any public buildings until after sketch plans together with outline descriptions and detailed estimates of cost shall have been made by the Administrator. The act which authorized the Director to construct a building for this Agency specifically exempts him from application of this provision that the Administrator approve plans and estimates. Even if we can read any intent into the basic enabling act to give the Administrator exclusive jurisdiction, and we cannot, we believe it would be clearly countered by this specific exemption for the Central Intelligence Agency's building.

The General Services Administration places reliance on the fact that their basic enabling act speaks of other public buildings of the classes under the control of the Administrator. They assert that general office buildings are a class of public buildings which have been put under control of the Administrator. Disregarding the question of whether the Central Intelligence Agency's building will be a general office building or will have such characteristics as to become a special purpose building, and thus by definition not subject to the Administrator's control, it appears to us as a matter of law that a building yet to be constructed does not automatically fall under the control of the Administrator even if it be a general office building. General office buildings were transferred to the Administrator under a reorganization plan. The Attorney General subsequently ruled that this plan was effective only as to buildings existing at that time and did not automatically give control over subsequent construction. In view of this ruling a current statute provides that

the Director of the Bureau of the Budget may transfer any office buildings, with certain specific exceptions that include special purpose buildings, to the custody of the Administrator. We believe, therefore, that no jurisdiction can be asserted by the Administrator until the Director of the Bureau of the Budget has made a determination on the specific and existing building. Insofar as the authority of the Director of the Bureau of the Budget in this respect is concerned, the same statute provides that nothing therein would impair or affect the authority of the Central Intelligence Agency. Therefore, as a matter of law, we believe the Director of the Bureau of the Budget could not take action to transfer the Central Intelligence Agency's building if such action would impair or affect the authority running to the Central Intelligence Agency. In this connection the Attorney General has held that the absolute authority of the former Public Buildings Administration over allotment of space in the District of Columbia, while normally applicable to new buildings, could not be exercised to remove a department or agency from a building specifically provided for its use by the Congress.

### Part III - Conclusion

It is our opinion that the statutory authority running to the Director of Central Intelligence for the construction of a headquarters building is clear-cut and complete and is not subject to restriction by statutes running to any other branch of the Executive arm of the Government. The Director can exercise this authority independently, assuming full and complete responsibility for plans, specifications, contracting, and construction, or he may by agreement on terms set by him allocate any portion of the work to any other agency qualified to perform it. Unless Congress qualifies or amends the existing authorization, the only limitations on the Director are the availability of funds and the requirements of audit of expenditures by the General Accounting Office.

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Attachment - Memorandum of Law